IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8708 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N S TIRMIJI

Versus

M S PATEL

Appearance:

1. Special Civil Application No. 8708 of 1989

MS CHAUDHARI for MR NK MAJMUDAR for Petitioner No. 1

MR PV HATHI for Respondent No. 1

MR SP SEN AGP for Respondents No. 2-4

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/01/2002

ORAL JUDGEMENT

#. The petitioner-N.S.Tirmiji, working in the Government

Photo Registry as Store Keeper-cum-Film Recorder, filed this petition under Article 227 of the Constitution of India and challenged the impugned judgment and order dated 21.10.1989 passed by the Gujarat Civil Services Tribunal (for short "the Tribunal") in Appeal No.162 of 1989.

#. The respondent-M.S.Patel, Junior Clerk filed appeal No.162 of 1989 before the Tribunal joining (1) the Manager, Government Photo Registry, (2) Inspector General of Registration, Gujarat State, Ahmedabad and (3) Shri N.S.Tirmiji (present petitioner) and Kum.M.N.Desai (present respondent No.4) and prayed that his seniority should be above Shri N.S.Tirmiji (present petitioner) and Kum.M.N.Desai (present respondent No.4) who had joined Government service on 17.9.1983 after his appointment. He, therefore, prayed that he was senior to both of them, therefore, he should be given deemed date in the cadre of Senior clerk to which promotions were given by the Manager, Government Photo Registry, Ahmedabad (present respondent No.2).

#. Before the Tribunal, the Manager of Government Photo Registry contended that since the appellant Shri Patel was reallotted in the Government Photo from 19.3.1984, in accordance with the Government circular dated 18.4.1978 (Annexure-E) his seniority can be counted only from the date of his appointment and not from the date of his initial appointment. On behalf of the present petitioner it was contended before the Tribunal that the appellant Shri Patel was relieved on 19.3.1984 and thereafter he joined Government Photo Registry at Ahmedabad on 20.3.1984. Thus, there was a break in his service and his seniority can be counted only from that date.

#. Considering the rival contentions raised by the parties, the learned Tribunal allowed the appeal by its impugned order dated 21.10.1989 and set aside the order dated 16.1.1989 passed by the present respondent No.3 i.e. Inspector General of Photo Registration and the appellant was assigned seniority above the present petitioner and Kum.M.N.Desai-present respondent No.4. This has been challenged only by the petitioner, whereas, Kum.M.N.Desai not thought it fit to challenge that order.

#. It was vehemently submitted by learned counsel Shri Majmudar for the petitioner that the learned Tribunal committed grave error in allowing the appeal of the appellant-present respondent No.1 because there was a break in service and as per the circular at Annexure-E he cannot be assigned seniority over the petitioner.

#. It may be stated that the learned Tribunal while allowing the appeal of the present respondent No.1 relied upon its earlier judgment delivered in appeal No.200 of 1987. It is also clear from the Tribunal's order that according to the Government Notification dated 17.4.1979, the seniority has to be reckoned from the date of passing of the post-training examination from the date of regular appointment whichever is later. In the instant case, admittedly, the date of appointment of the appellant-respondent No.1 under the scheme was 15.10.1982 and that he had passed on 12.8.1986 the present petitioner as well as respondent No.4. The present petitioner as well as respondent No.4 both had also passed the examination on the same day i.e. on 12.8.1986 but initial appointment of the present petitioner was dated 10.11.1982 and the present respondent No.4 was 17.9.83. Whereas, the appellant-respondent No.1 was appointed on 15.10.1982. Merely because the appellant found to be surplus and relieved on 19.3.1984 and joined, present respondent No.2 immediately on the next day i.e. 20.3.1984 it could not have considered as a break in service. From the judgment of the learned Tribunal it is clear that the appellant-respondent No.1 was appointed in the office of City Mamlatdar, Ahmedabad and reallotted on being found surplus in the Government Photo Registry on 19.3.1984. The joining time of one day, as admissible under law, was granted, therefore, it cannot be said to be a break in service.

#. In view of the above, I am of the clear opinion that the learned Tribunal was justified in allowing the appeal of the appellant-present respondent No.1 and assigning seniority for him. When substantial justice is done to the party then this court would not interfere with the order of the Tribunal in its supervisory jurisdiction under Article 227 of the Constitution of India. In case of Mohd. Yunus Vs. Mohd. Mustaqim & Ors. reported in AIR 1984 SC 38 the Hon'ble Supreme Court while considering the scope of Article 227 of the Constitution of India and the jurisdiction of High Court under Article 227 has held that even error of law cannot be corrected under Article 227 by the High Court. In the instant case, no error much less error of law is committed by the Tribunal while allowing the appeal.

#. In that view of the matter, I do not see any reason to exercise my supervisory jurisdiction under Article 227 of the Constitution of India when substantial justice is done by the learned Tribunal in the matter.

#. In view of the above discussion, this petition fails and is dismissed. However, there shall be no order as to costs.

(B.J.Shethna, J.)

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